Office of the Attorney General
State of North Dakota

Opinion No. 83-44

Date Issued: December 19, 1983

Requested by: Robert G. Hoy
Cass County State's Attorney

--QUESTION PRESENTED--

Whether land platted and classified as commercial property prior for ad valorem taxation purposes prior to March 30, 1981, can now be reclassified as agricultural property because of the 1983 amendment to Section 57-02-01(1) of the North Dakota Century Code.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that land platted and classified as commercial property for ad valorem taxation purposes prior to March 30, 1981, can not now be reclassified as agricultural property because of the 1983 amendment of Section 57-02-01(1), N.D.C.C.

--ANALYSIS--

The definition of [A]gricultural property' for the purpose of ad valorem taxation is presently codified as section 57-02-01(1), N.D.C.C. It was extensively amended by the 1983 Legislative Assembly. (See 1983 N.D. Sess. Laws 594.) The amendments are effective for taxable years beginning after December 31, 1982.

The relevant part of Section 57-02-01(1), N.D.C.C., as amended in 1983 by the underlined language, is as follows:

> 'Agricultural property' means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Property platted on or after March 30, 1981, is not agricultural property when any three of the following conditions exist:
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> a. The land is platted by the owner.
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> b. Public improvements including sewer, water, or streets are in place.

c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.

d. Property is zoned other than agricultural.

e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.

f. The parcel is less than ten acres and not contiguous to agricultural property.

g. The property sells for more than four times the county average true and full agricultural value.

The issue raised by this amendment is whether the addition in the first line of the word 'platted' changes the classification for ad valorem purposes of real property that was platted and classified as commercial property prior to March 30, 1981, if that property is otherwise primarily used for agricultural purposes.

A review of the legislative committee notes reveals that there was discussion on the meaning of the phrase in the statute stating that '. . . except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals . . .'. Testimony further revealed that this language was a 'grandfather clause' intended to protect that property which was platted but nevertheless assessed as agricultural land prior to March 30, 1981, from the new definition found in the subsequent underlined language of the Bill so long as it was used for agricultural purposes.

The legislative committee notes also reveal that the Bill's primary sponsor, Representative Hughes, testified on March 1, 1983, before the Senate Finance and Taxation Committee and on March 24, 1983, before the Conference Committee. In each instance, Representative Hughes testified that it was the intention of the legislation that the amendments contained in House Bill No. 1296 only apply to the future.

Section 1-02-39(3), N.D.C.C., clearly authorizes the consideration of legislative history when resolving issues of this kind. North American Coal Corp. v. Huber, 268 N.W.2d 593 (N.D. 1978).

In the case of In the Matter of the Estate of Knudson, 322 N.W.2d 454 (N.D. 1982), the North Dakota Supreme Court said:

> Other canons of construction that guide us include: provisions which are in conflict should be 'harmonized' ( § 1-02-09.1, NDCC), or 'adjusted' ( § 1-02-27, NDCC) so that the entire statute may be effective and a just and reasonable result accomplished ( § 1-02-38(2)(3), NDCC). See also, City of Fargo Cass Cty. v. State, 260 N.W.2d 333 (N.D. 1977). If a statute is latently or patently ambiguous, we may consider all pertinent, extrinsic evidence of legislative intent ( § 1-02-39, NDCC). See also St. Paul Mercury Insurance Company v. Andrews, 321 N.W.2d 483 (N.D. 1982). 322 N.W.2d 457 (Emphasis supplied.)

To hold that the insertion of the word 'platted' in the first line of Section 57-02-01(1), N.D.C.C., should now require that land platted and classified as commercial property prior to March 30, 1981, be reclassified as agricultural property if so used, would not only be against expressed legislative intent, it would also remove all effect to the language of the above-quoted 'grandfather clause'.

The 1983 amendment to Section 57-02-01(1), N.D.C.C., has a prospective application only after March 30, 1981. Therefore it is my opinion that land platted and classified as commercial property for ad valorem taxation purposes prior to March 30, 1981, can not now be classified as agricultrual property simply because of the 1983 amendment to Section 57-02-01(1), N.D.C.C.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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